DECLARATION OF VICE-PRESIDENT SEBUTINDE

The question put to the Court can be answered in the affirmative by applying to Convention No. 87 the general rule of interpretation reflected in Article 31 of the VCLT, without recourse to supplementary means of interpretation under Article 32 thereof.

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I. INTRODUCTION

1. While I have voted in favour of subparagraphs (1), (2) and (3) of operative paragraph 142 of the Advisory Opinion, I am of the view that the question put to the Court can be answered in the affirmative by applying to Convention No. 87 the general rule of interpretation reflected in Article 31 of the Vienna Convention on the Law of Treaties ("VCLT"), without recourse to supplementary means of interpretation under Article 32 thereof. Applying Article 31 of the VCLT, the ordinary meaning of the relevant provisions of Convention No. 87, read in good faith, in their context and in the light of the Convention's object and purpose, supports the conclusion that protection of the right to strike falls within the scope of the freedom of association guaranteed by that Convention. Although Convention No. 87 makes no express reference to strikes, its key provisions — particularly Articles 3, 10 and 11 — are sufficiently broad to encompass strike action undertaken in defence of workers' legitimate occupational interests. Absent such protection, freedom of association would be deprived of much of its practical effect, rendering the right to strike a necessary corollary of that freedom. This reading requires no recourse to supplementary means of interpretation under Article 32.

II. APPLICABLE RULES OF TREATY INTERPRETATION

2. It is common ground among the participants that in the present advisory proceedings, the rules of treaty interpretation codified in Articles 31 (*General rule of interpretation*) and 32 (*Supplementary means of interpretation*) of the VCLT are applicable to the interpretation of Convention No. 87, as a matter of customary international law. The Court has, moreover, repeatedly affirmed that the rules set out in Articles 31 and 32 of the VCLT reflect customary international law

and are therefore applicable to the interpretation of treaties concluded prior to the its entry into force[1]. Accordingly, the Court should apply the ordinary rules of treaty interpretation codified in Articles 31 and 32 of the VCLT to Convention No. 87, consistent with its settled jurisprudence.

3. Articles 31 to 32 of the VCLT provide as follows:

"*Article 31. General rule of interpretation*

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) [a]ny agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) [a]ny instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) [a]ny subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) [a]ny subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) [a]ny relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32. Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) [l]eaves the meaning ambiguous or obscure; or

(b) [l]eads to a result which is manifestly absurd or unreasonable."

4. Articles 31 and 32 of the VCLT establish a structured and hierarchical framework for treaty interpretation, within which subsequent practice plays a distinct role. The Court begins with the general rule set out in Article 31, applying a single, integrated operation that combines the ordinary

[1] See e.g. *Obligations of States in respect of Climate Change, Advisory Opinion of 23 July 2025*, para. 176; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar), Preliminary Objections, Judgment, I.C.J. Reports 2022 (II)*, p. 510, para. 87.

meaning of the treaty's terms, their context, and the treaty's object and purpose, together with any subsequent agreement or subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation, within the meaning of Article 31 (3) *(b)*. Where such subsequent practice demonstrates a common understanding of the parties, it constitutes an authoritative element of interpretation forming part of the general rule. Only where the application of Article 31, including consideration of any qualifying subsequent practice, leaves the meaning ambiguous or obscure, or leads to a manifestly absurd or unreasonable result, does the Court have recourse to supplementary means of interpretation under Article 32, such as the preparatory work of the treaty and the circumstances of its conclusion, either to confirm the meaning already established or to resolve any remaining uncertainty.

5. In accordance with Article 31 of the VCLT, Convention No. 87 falls to be interpreted in good faith, according to the ordinary meaning of its terms, read in their context and in the light of the Convention's object and purpose. The text of the Convention, including its preamble and annexes, constitutes the primary point of departure for that interpretation. As part of the relevant context, account may be taken: of any agreements related to the conclusion of the Convention and accepted by all the parties; of any instruments made by one or more parties in connection with its conclusion and accepted by the others as relating to the Convention; of any subsequent agreements between the parties regarding its interpretation or application; of any subsequent practice in the application of the Convention that establishes the agreement of the parties as to its interpretation; and of any relevant rules of international law applicable in the relations between the parties. In my view, the question put before the Court can be answered unequivocally by resorting to the primary means of treaty interpretation, without the need to resort to the supplementary means. The meaning of Convention No. 87 will be examined in turn in the light of these primary means of interpretation.

1. Ordinary meaning and contextual interpretation (VCLT, Art. 31 (1))

6. The Court is correct to observe, in paragraph 67, that Convention No. 87 contains no explicit reference to a right to strike. As a matter of ordinary understanding, strike action constitutes a form of collective or industrial action by workers — typically organized through trade unions — aimed at promoting or defending their occupational interests, whether by negotiating wages and working conditions, protesting unfair labour practices, or seeking to influence employer or public policy decisions. On its face, Convention No. 87 does not expressly confer a right to strike; neither the term "strike" nor the phrase "right to strike" appears anywhere in its text.

7. The Convention instead establishes broader and foundational guarantees: the right of workers and employers to join organizations of their own choosing (Article 2); the definition of such organizations as bodies existing for the purpose of furthering and defending the interests of workers or employers (Article 10); the right of those organizations, in full freedom, to organize their activities and formulate their programmes (Article 3 (1)); and the obligation incumbent upon States parties to ensure the free exercise of the right to organize (Article 11). Read together, these provisions situate industrial action — including strike action undertaken in pursuit of legitimate industrial interests — within the sphere of activities through which workers' organizations give effect to their representational functions under the Convention.

8. Contrary to the restrictive interpretation advanced by the International Organisation of Employers, established principles of treaty interpretation do not support the exclusion of strike action from the scope of Convention No. 87. As early as the jurisprudence of the Permanent Court of International Justice, it was recognized, in relation to other ILO Conventions, that — where the terms of a convention, in their ordinary meaning, are sufficiently broad to encompass a particular fact or

situation, and where no special intention to the contrary is apparent from the instrument itself — there is no justification for interpreting provisions of general scope otherwise than in accordance with their natural meaning[2]. Applied to Convention No. 87, whose guarantees are framed in deliberately broad terms, the exclusion of strikes from the "activities" and "programmes" of workers' organizations would unduly narrow the scope of Articles 3 (1) and 10, depriving them of practical significance. Such an interpretation would also run counter to the principle of effectiveness (*effet utile*), which requires that treaty provisions be construed so as to give them full practical effect, rather than in a manner that renders core aspects of the freedom entrusted to workers' organizations largely theoretical or illusory[3].

2. Object and purpose (VCLT, Art. 31 (1))

9. Pursuant to Article 31 of the VCLT, the Court has consistently underscored the importance of interpreting treaty terms in light of their object and purpose[4]. In ascertaining a treaty's object and purpose, the Court may have regard, *inter alia*, to its title and preamble[5]. The title of Convention No. 87 — Freedom of Association and Protection of the Right to Organise — reflects its object and purpose, namely the protection of freedom of association as a substantive and effective right. By linking freedom of association with the protection of the right to organize, it makes clear that the Convention is directed not merely at the formal existence of workers' and employers' organizations, but at safeguarding their capacity to function autonomously and effectively in the pursuit of their members' interests. Similarly, the preamble of Convention No. 87 evidences its object and purpose by affirming freedom of association as an instrumental principle aimed at improving conditions of labour, establishing peace and securing sustained progress. By anchoring the Convention in the ILO Constitution and the Declaration of Philadelphia, it underscores that freedom of association is to be protected as an effective and practical guarantee, not a merely formal one.

10. Accordingly, pursuant to Article 31 (1) of the VCLT, the object and purpose of Convention No. 87 are to be derived from the ordinary meaning of its terms, read in their context and in the light of its title and preamble. Those contextual elements make clear that the Convention is intended to secure freedom of association and the right to organize as effective guarantees, enabling workers' and employers' organizations to function freely and autonomously in the pursuit of their legitimate interests. Read in good faith and in that light, the relevant provisions of the Convention admit the protection of strike action as falling within the scope of the freedom thereby guaranteed.

11. Furthermore, as pointed out by many participants, there are strong reasons to find a connection between freedom of association, the right to participate in collective bargaining and the right to strike, given the strong historical association between strike action and freedom of association. The conditions of labour cannot be improved unless workers and their trade unions can effectively negotiate with their employers. Given the inherently asymmetrical industrial relations between workers and employers, withdrawal of labour may, from time to time, be necessary to exert economic pressure and strike action is one of the primary means by which workers' organizations exert that pressure. The right to strike is integral to the effective realization of freedom of association

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[2] *Interpretation of the Convention of 1919 concerning Employment of Women during the Night, Advisory Opinion*, *1932, P.C.I.J., Series A/B, No. 50*, p. 377; *Competence of the ILO in regard to International Regulation of the Conditions of Labour of Persons Employed in Agriculture, Advisory Opinion*, *1922, P.C.I.J., Series B, No. 2*, pp. 39 and 41.

[3] See e.g. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, pp. 125-126, paras. 133-134.

[4] See e.g. *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation)*, *Judgment, I.C.J. Reports 2024 (I)*, p. 118, para. 50.

[5] See *ibid.*

and collective bargaining, as it provides workers with a practical mechanism to balance power in industrial relations. Excluding the right to strike from the interpretation of the terms of Article 3 (1) of Convention No. 87 would significantly undermine the Convention's object and purpose. In the words of a decision of the German Federal Labour Court cited by several participants, "[w]ithout this option of going on strike, collective bargaining would be no more than 'collective begging'"[6]. Accordingly, the ordinary meaning of the terms of Convention No. 87, in particular Articles 3 (1) and 10 thereof, read in their context and in light of the Convention's object and purpose, supports a finding that the right to strike is protected under that Convention.

3. Relevant agreements and instruments (VCLT, Art. 31 (2) *(a)* & *(b)* and (3) *(a)*)

12. There is no evidence of any agreement concluded among all the parties in connection with the conclusion of Convention No. 87, or regarding its interpretation or application. Likewise, no instrument drawn up by one or more parties and accepted by the others as relating to the Convention exists that could constitute a primary means of interpretation under Article 31 (2) *(a)*, 31 (2) *(b)*, or 31 (3) *(a)* of the VCLT.

4. Subsequent practice in the application of the Convention (VCLT, Art. 31 (3) *(b)*)

13. Pursuant to Article 31 (3) *(b)* of the VCLT, subsequent practice in the application of Convention No. 87 which establishes the agreement of the parties regarding its interpretation constitutes a primary and authoritative means of treaty interpretation. This provision reflects the principle that the meaning of treaty terms is not immutable but may be elucidated through the consistent and concordant conduct of the parties following the treaty's entry into force. Such practice provides authoritative evidence of a shared understanding of the treaty's provisions and may serve to clarify ambiguities or confirm the intended scope of the obligations undertaken. The International Law Commission (ILC) explained that "subsequent practice of the parties" is relevant under the general rule of treaty interpretation only where it consists of concordant conduct establishing the common understanding of *all* the parties regarding the meaning of the treaty.

14. In the case of treaties concluded within the framework of international organizations, it may be necessary to consider the practice of supervisory bodies established under those organizations. However, as emphasized by the ILC in its Draft Conclusions on Subsequent Agreements and Subsequent Practice, the practice of such bodies — typically composed of independent experts acting in their personal capacity — does not itself constitute "subsequent practice" within the meaning of Article 31 (3) *(b)* of the VCLT. This is because such practice is not attributable to the States parties to the treaty, as such. While pronouncements or actions of these bodies may influence interpretation or prompt subsequent practice by States, they cannot, on their own, establish the agreement of the parties regarding the interpretation of the treaty[7]. Nonetheless, pronouncements by supervisory bodies may give rise to subsequent practice where the parties to a treaty can be said to have explicitly or implicitly accepted the interpretation of those bodies[8].

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[6] Federal Labour Court (Germany), decision of 12 March 1985 — 1 AZR 636/82, *Neue Zeitschrift für Arbeitsrecht (NZA)*, 1985, p. 538.

[7] ILC, Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, *Yearbook of the International Law Commission*, 2018, Vol. II, Part Two, para. 51 (ILC Draft conclusions on subsequent agreements), conclusion 13 and commentary.

[8] *Ibid.*

15. In the context of Convention No. 87, participants have commented upon three forms of State practice, including: *(a)* pronouncements by ILO supervisory bodies and States' reactions to those statements; and *(b)* legislative and judicial practice of States pertaining to the right to strike. Each of these types of practice will be examined in turn, to ascertain whether they qualify as "subsequent practice of the parties that establishes their agreement" and, therefore, as a primary part of the general rule of interpretation codified in Article 31 (3) *(b)* of the VCLT.

(a) ***Pronouncements by ILO supervisory bodies and States' reactions to those statements***

16. ILO supervisory bodies have consistently maintained that Convention No. 87 is linked to the right to strike. The Committee on Freedom of Association (CFA) first recognized the existence of the right to strike and its connection to freedom of association in 1952[9]. This position was reinforced in 1977[10] when the CFA expressly endorsed the view that the right to strike is related to Article 3 of Convention 87. Similarly, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) stated in its 1959 General Survey that restrictions on the right to strike may be incompatible with Convention No. 87[11]. This interpretation was further developed in the 1973 General Survey, which examined the relationship between Articles 3 and 10 of the Convention and the right to strike. In subsequent years, the CoE repeatedly affirmed this position, including in its reports of 1994, 1996 and 2012, concluding that the right to strike is protected under Convention No. 87 and is integral to the right to organize[12]. Six ILO Commissions of Inquiry reports — issued in 1971, 1984, 1991, 2003, 2010 and 2023 — have reached the same conclusion, consistently pronouncing that the right to strike falls within the scope of Convention No. 87[13].

17. While the pronouncements of ILO supervisory bodies do not, as such, constitute subsequent practice attributable to the States parties, the manner in which States react to those pronouncements may, in appropriate circumstances, constitute relevant subsequent practice within the meaning of Article 31 (3) *(b)* of the VCLT, where such reactions evidence a common understanding accepted by the parties regarding the interpretation of the Convention. Absent such acceptance, the pronouncements of supervisory bodies remain analytically distinct from subsequent practice establishing the agreement of the parties and cannot, on their own, be treated as an authentic means of interpretation.

18. It is undisputed that the above-mentioned pronouncements did not provoke significant controversy among States parties prior to 2012. Notably, there is no indication that the Committee on the Application of Standards (CAS) — which includes government delegates and is responsible for examining the reports of the CEACR — raised any objection in response to the 1959 General Survey, in which the CEACR first suggested that Convention No. 87 may encompass protection of

[9] Case No. 28, Second Report of the CFA, para. 68, Appendix V, p. 210 of the Sixth Report of the International Labour Organization to the United Nations.

[10] Cases Nos. 834 and 851, 160th Report of the CFA, para. 199, *Official Bulletin*, Vol. LX, p. 47.

[11] CEACR, General Survey, 1959, para. 68.

[12] CEACR, General Survey, 1973; CEACR, General Survey, 1994, para. 149; CEACR, Report on the Application of Conventions and Recommendations, 1996; CEACR, General Survey 2012, para. 118.

[13] ILO Dossier, Documents Nos. 276-281.

the right to strike[14]. Likewise, no objections were recorded during discussions of the 1973 General Survey, which articulated this conclusion more firmly and in greater detail[15]. However, during the International Labour Conference of that year, Switzerland — then not a party to Convention No. 87 — stated that the right to strike was not covered by the Convention[16].

19. In subsequent years, certain States intermittently expressed reservations regarding this interpretation. For example, in 1978, the USSR stated that "it was doubtful whether ILO standards dealt with the right to strike"[17]. In 1979, Ireland asserted that "Articles 3, 8, and 10 of Convention No. 87 did not provide for such a right"[18]. Uruguay, in 1982, maintained that the right to strike "was not expressly covered by any [ILO] Convention"[19], and East Germany raised a similar objection in 1986[20]. More recently, following the 2012 controversy, Algeria voiced its objection to the interpretation by the supervisory bodies in 2014[21]. Most recently, in the context of these proceedings, four States — Bangladesh, Costa Rica, Japan and Switzerland — have submitted that the right to strike is not protected under Convention No. 87. It should be noted, however, that two of the States previously objecting (the USSR and East Germany) no longer exist, and their successor States do not appear to share these views. Moreover, Uruguay's statement that the right to strike was not "expressly" covered, is not necessarily inconsistent with the CEACR's position that the Convention implicitly protects the right to strike.

20. In any event, these objections represent exceptions rather than the norm. For several decades, most States either expressed support for, or raised no objection to, the consistent interpretation of Convention No. 87 by ILO supervisory bodies[22]. In my view, this silence is significant, particularly given that States represented on the tripartite CAS are expressly tasked with reviewing the findings of the CEACR. Furthermore, as noted by the International Trade Union Confederation (ITUC), when States disagreed with a finding that they had violated the right to strike, they typically contested the Committee's interpretation of the scope of that right rather than disputing the premise that the right to strike is protected under the Convention[23]. Additionally, as some participants have observed, 122 of the 157 States parties to Convention 87 ratified the treaty *after* the ILO supervisory bodies had recognized the protection of the right to strike, suggesting that these States understood and accepted this interpretation as part of the recognized scope of the Convention[24].

21. In *Kasikili/Sedudu Island (Botswana/Namibia)*, the Court held that subsequent practice may be established where the conduct of the parties, over a prolonged period and with knowledge of

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[14] Claire La Hovary, "Showdown at the ILO? A Historical Perspective on the Employers Group's 2012 Challenge to the Right to Strike", *Industrial Law Journal*, Vol. 42, Issue 4, December 2013, p. 356.

[15] *Ibid.*, p. 357.

[16] International Labour Conference, 58th Session, 1973, Record of Proceedings, p. 590, para. 26.

[17] ILO Dossier, Document No. 241, p. 29.

[18] ILO Dossier, Document No. 242, p. 35.

[19] ILO Dossier, Document No. 243, p. 31.

[20] International Labour Convention, 72nd Session, 1986, Record of Proceedings, paras. 31-35.

[21] International Labour Conference, 103rd Session, 2014, Record of Proceedings.

[22] See e.g. International Labour Conference, 81st Session, 1994, Record of proceedings, Report of the Committee on the Application of Standards, pp. 25/40-25/41, paras. 144-147.

[23] Written statement of the International Trade Union Confederation, paras. 4.110-4.117.

[24] Written statement of the Netherlands, paras. 2.16-2.20; Written statement of South Africa, para. 55; Written statement of Vanuatu, paras. 32-37; Written statement of the International Trade Union Confederation, paras. 4.219-4.220; Written statement of the Organisation of African Caribbean and Pacific States, paras. 50-55.

the relevant interpretation, evidences a shared understanding as to the meaning of treaty terms, even in the absence of express agreement. Similarly, in *Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua),* the Court attached decisive weight to long-standing and repeated conduct, coupled with the absence of objection, as indicative of a common interpretation accepted by the parties.

22. Applying those principles to the present advisory proceedings, the uninterrupted and coherent line of interpretation advanced by the ILO supervisory bodies since the early years following the entry into force of Convention No. 87 — linking freedom of association with the right to strike — was articulated publicly, reiterated over several decades and communicated to States through institutional mechanisms expressly designed for supervision and review. The absence of objection by States represented on the CAS to the 1959 and 1973 General Surveys, notwithstanding their mandate to scrutinize and, where appropriate, contest the findings of the CEACR, is legally significant. As the Court emphasized in *Kasikili/Sedudu* and *Dispute regarding Navigational and Related Rights*, such silence, in circumstances calling for reaction, may constitute acquiescence and thereby contribute to the formation of subsequent practice.

23. The limited and intermittent objections subsequently expressed by some States identified above are exceptional, temporally discontinuous and, in some cases, emanated from States not bound by the Convention at the relevant time or from States which no longer exist. They therefore do not displace the broader pattern of acceptance.

24. Finally, while the widespread ratification of Convention No. 87 and the domestic legislative and judicial practice of States following the articulation of the right-to-strike interpretation do not, as such, constitute subsequent practice establishing the agreement of the parties within the meaning of Article 31 (3) *(b)* of the VCLT, they cannot be disregarded. As the Court has recognized, including in it 2015 Judgment in *Certain Activities* (*Costa Rica* v. *Nicaragua)*, conduct evincing acceptance of an established interpretative framework may be relevant in corroborating an interpretation, even where the threshold of agreed subsequent practice is not met. Taken together, the consistent supervisory interpretation, the prolonged and informed response of States, and the subsequent ratification and implementation practice of States parties constitute persuasive supplementary means of interpretation within the meaning of Article 32 of the VCLT, capable of confirming the interpretation reached on the basis of Article 31.

(b) ***Legislative and judicial practice of States pertaining to the right to strike***

25. Evidence of domestic acceptance of the interpretations advanced by the CEACR and the Committee on Standards — linking the right to strike to freedom of association under Convention 87 — can be found in the legislative and judicial practice of States. As noted by the ILO in a background document prepared in 2015, the vast majority of ILO Member States, including parties to Convention No. 87, have amended their domestic laws or adjusted their practices to align with these interpretations or have taken them into account when drafting legislation regulating strikes. Specifically, the document notes that at least 97 Member States protect the right to strike explicitly in their national constitutions; more than 150 States regulate strikes in their general legislation; and, in other States, the courts have recognized a constitutional right to strike on the basis of the right to organize, the right to associate and to collectively bargain.

26. Furthermore, numerous national courts, when assessing the constitutionality of restrictions on the right to strike, including in Argentina, Botswana, Burkina Faso, Canada, Colombia, Germany, Italy, Nigeria, Senegal, South Africa and Spain[25] have either referred positively to the conclusions of ILO supervisory bodies that Convention No. 87 protects the right to strike or have found that the right to strike is a necessary corollary of the right to freedom of association.

27. Accordingly, while the mere existence of domestic protection of the right to strike does not in itself, constitute "subsequent practice" establishing the agreement of the parties within the meaning of Article 31 (3) *(b)* of the VCLT, the consistent body of domestic legislative and judicial practice described above cannot be disregarded. In the absence of agreement sufficient to engage Article 31 (3) *(b)*, such material remains relevant as a supplementary means of interpretation under Article 32 of the Convention and must be taken into account in assessing the meaning and scope of the treaty provisions in question. In numerous States, courts and legislatures have expressly relied on Convention No. 87 or have characterized the right to strike as an inherent corollary of freedom of association, in terms that reflect and give effect to the consistent interpretation advanced by the ILO supervisory bodies.

5. No need to refer to supplementary means of interpretation under Article 32 of the VCLT

28. As stated above, only when the meaning of a treaty remains unclear or yields an absurd result under Article 31, does Article 32 permit use of the treaty's preparatory work or the circumstances surrounding the treaty's conclusion, in order to *confirm* the meaning arrived at under Article 31 or to *clarify* that meaning if it is ambiguous, obscure, or leads to an absurd or unreasonable outcome. In the present case, the interpretation reached under Article 31 is clear enough and there is no need to resort to the *travaux préparatoires* of Convention No. 87, which are, in any event, inconclusive as explained in paragraphs 104 to 111 of the Advisory Opinion.

III. CONCLUSION

29. In conclusion, applying the primary rules of treaty interpretation set out in Article 31 of the VCLT, the ordinary meaning of the relevant provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), interpreted in good faith, in their context, and in the light of the Convention's object and purpose, leads to the conclusion that protection of the right to strike is encompassed within the freedom of association guaranteed by that Convention. Although Convention No. 87 does not expressly refer to strikes, its provisions — particularly Articles 3, 10 and 11 — are sufficiently broad to cover strike action pursued in defence of workers' legitimate occupational interests. Freedom of association would be deprived of much of its practical effect absent such protection, rendering the right to strike a necessary corollary of that freedom. This interpretation is confirmed by the Convention's object and purpose, as well as by

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[25] See Supreme Court of Argentina, *Orellano* v. *el Correo Oficial de la República Argentina SA*, CSJ 93/2013 (49-0)/CS1, para. 11; High Court of Lobatse, *Botswana Public Employees' Union and others* v. *Minister of Labour and Home Affairs and others*, MAHLB-000674-11 (2012), paras. 221-222 and 250; Bobo — Dioulasso Appeal Court, Social Chamber, *Messrs Karama and Bakouan* v. *Société Industrielle du Faso* (SIFA), No. 035 (2006); Supreme Court of Canada, *Saskatchewan Federation of Labour* v. *Saskatchewan*, Case No. 2015 SCC 4 (2015), paras. 65-67; Supreme Court of Justice (Colombia), Labour Cassation Chamber, SL1680-2020, Radicación n.° 81296, Acta 22, 24 June 2020, chapter 1.1, pp. 10-11; Federal Labour Court (Germany), decision of 12 March 1985 — 1 AZR 636/82, *NZA,* 1985, p. 538; Constitutional Court of the Italian Republic, Decision No. 141, 15 December 1967,; Industrial Court of Nigeria, *Aero Contractors Co. of Nigeria Limited* v. *the National Association of Aircrafts Pilots and Engineers, the Air Transport Senior Staff Association of Nigeria and the National Union of Air Transport Employees*, Case No. NICN/LA/120/2013 (2014), p. 18; Constitutional Council of Senegal, Case No. 2/C/2013 (2013), paras. 12-13; Constitutional Court of South Africa, *NUMSA* v. *Bader Bop*, Case No. CCT 14/02 (2002); Decision of the Tribunal Constitucional (Spain) 37/1983, 11 May 1983 (ECLI:ES:TC:1983:37).

subsequent practice of the parties and relevant rules of international law. In these circumstances, there is no need to have recourse to supplementary means of interpretation under Article 32 of the VCLT.

(Signed) Julia SEBUTINDE.

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